

INDIAN CHILD WELFARE ACT (ICWA) CIRCUIT COURT FORMS

Link to Circuit Court Forms: <http://www.wicourts.gov/forms1/circuit/index.htm>

Form #	Form Name
IW-1501	Petition For Appointment of Guardian (Full/Limited/Temporary/Emergency Guardianship) (48.9795, Wis. Stats.) – ICWA
IW-1530	Letters of Guardianship and Dispositional Order Appointing Guardian (Full/Limited/Temporary Guardianship) (48.9795, Wis. Stats.) – ICWA
IW-1605	Petition For Appointment of Guardian (48.977, Wis. Stats.) – ICWA
IW-1606	Dispositional Order Appointing Guardian (48.977, Wis. Stats.) – ICWA
IW-1608	Temporary Physical Custody Request (Chapter 48) – ICWA
IW-1609	Statement of Active Efforts – ICWA
IW-1610	Petition for Protection or Services (Chapter 48) – ICWA
IW-1611 T	Dispositional Order - Protection or Services with TPR Notice (Chapter 48) – ICWA
IW-1630	Petition for Termination of Parental Rights – ICWA
IW-1633	Summons - Termination of Parental Rights – ICWA
IW-1637	Consent to Termination of Parental Rights (Judicial) – ICWA
IW-1638	Order Concerning Termination of Parental Rights (Voluntary) – ICWA
IW-1639	Order Concerning Termination of Parental Rights (Involuntary) – ICWA
IW-1647	Order on Petition for Minor Child Adoption – ICWA
IW-1649	Indian Child Adoptee Information – ICWA
IW-1700	Notice of Permanency Hearing – ICWA
IW-1711	Order for Temporary Physical Custody (Secure/Nonsecure) – ICWA
IW-1716	Notice of Rights and Obligations – ICWA
IW-1720	Summons – ICWA
IW-1721	Petition for Protection or Services (Chapter 938) – ICWA
IW-1724	Notice of Hearing (Juvenile) – ICWA
IW-1740	Motion for Transfer to Tribal Court – ICWA
IW-1741	Order on Motion for Transfer to Tribal Court – ICWA
IW-1746 T	Dispositional Order - Protection or Services with TPR Notice (Chapter 938) – ICWA
IW-1754	Notice of Change in Placement (Out-of-Home to Out-of-Home/Out-of-Home to In-Home/In-Home to In-Home) – ICWA
IW-1766	Request to Change Placement, Revise Disposition Order, Extend Dispositional Order, Review Permanency Plan, Terminate Dispositional Order – ICWA
IW-1783A	Consent to Delegation of Powers under §48.979 of an Indian Child
IW-1783B	Certificate to Delegation of Powers under §48.979 of an Indian Child
IW-1785A	Stipulation for Consent Decree (Out-of-Home Placement Only) – ICWA
IW-1788	Order for Extension of Disposition Order/Consent Decree (Out-of-Home Placement Only) – ICWA
IW-1788 T	Order for Extension of Disposition Order/Consent Decree with TPR Notice (Out-of-Home Placement Only) – ICWA
IW-1789 T	Order for Change in Placement with TPR Notice (In-Home to Out-of-Home Placement Only) – ICWA
IW-1790 T	Order for Change in Placement with TPR Notice (Out-of-Home to Out-of-Home Placement Only) – ICWA
IW-1791	Permanency Hearing Order – ICWA
IW-1791 T	Permanency Hearing Order with TPR Notice – ICWA

JUDICIAL CHECKLIST – WISCONSIN INDIAN CHILD WELFARE ACT

The Wisconsin Indian Child Welfare Act (WICWA) codifies the federal Indian Child Welfare Act into state statutes. WICWA protects the best interests of Indian children while promoting stability and security of Indian tribes and families. WICWA **applies** to out-of-home placements in CHIPS, status offenses in JIPS, and guardianship cases, TPR proceedings, and pre-adoptive and adoptive placements. WICWA **does not apply** to placements based on delinquent acts or family court proceedings when one of the parents has custody. Additional information on WICWA can be found at: www.wiccipttraining.com/ELearningActivities

APPLICABILITY

An “Indian child” is defined as an unmarried person under the age of 18 who is either:

- 1) A member of a federally recognized Indian tribe, or
- 2) The biological child of a member of a tribe **AND** eligible for membership in a tribe.

There is an ongoing obligation throughout the case to identify an Indian child. Court must instruct parties to inform court if they receive information indicating that there is reason to know the child is Indian child.

- ☐ Did the court make an inquiry of all case participants, on the record, as to whether the case involves an Indian child? *If there is “reason to know” that the child is an Indian child, proceed as a WICWA case.*
- ☐ Have both parents and any Indian custodian been identified? Has paternity been acknowledged or established? What has been done to locate an absent or missing parent?
- ☐ Is the child a member of a tribe? If not, is either parent a member of or eligible for membership in a tribe? Is the child eligible for membership in a tribe? *Each tribe determines membership.*
- ☐ If the parents are unable to provide information on tribal affiliation, have family members been consulted?
- ☐ Has a Request for Confirmation of Child’s Indian Status form been sent to applicable tribe(s)? Has documentation of eligibility for membership been received back from the tribe(s)?

NOTICE FOR OUT-OF-HOME PLACEMENT AND INVOLUNTARY TERMINATION OF PARENTAL RIGHTS

First Hearing in the Case (excluding Temporary Physical Custody Hearings)

- ☐ Has notice of the proceeding been sent to the tribe, parents, and Indian custodian (if any) by registered mail with return receipt requested?
 - ☐ Have at least 10 days elapsed since **receipt** of the notices? *If no, adjourn hearing.*
 - ☐ Have return receipts been received and filed with the court?
- ☐ If parent or tribe is unknown, was notice sent to Bureau of Indian Affairs at least 15 days prior to hearing?
- ☐ Has a parent, tribe, or Indian custodian requested adjournment to prepare? *If yes, adjourn up to 20 days.*
- ☐ If the parents/Indian custodian do not have counsel, do they want to be represented? Have they contacted the Public Defender’s Office? *Right to appointed counsel if indigent.*
- ☐ Have parents been notified of their right to intervene and to request/object to transfer to tribal court?
- ☐ Have parents been notified of potential consequences of case on parental and custodial rights (*form IW-1716*)?

Subsequent Hearings

- ☐ Has tribal contact information (names, addresses, and phone numbers) been documented in the court record for notification of future court proceedings?
- ☐ Has written notice to tribe, parents, and Indian custodian been provided by mail, personal delivery, or fax?
- ☐ Has the tribe received copies of all reports, orders, and other documents submitted to the court?

INTERVENTION AND TRANSFER OF JURISDICTION

- ☐ Has the tribe or Indian custodian made a motion to intervene? *Right to intervene at any stage.*
- ☐ Is there a request by the tribe, Indian custodian, or parent to transfer the case to tribal court?
- ☐ If transfer requested, the case **shall be** transferred to tribal court **unless one of the following applies**:
 - ☐ Does one of the parents object to the transfer?
 - ☐ Has the tribal court declined jurisdiction or does the tribe lack a tribal court?
 - ☐ Is there good cause under ss. 48.028(3)(c)3. or 938.028(3)(c)3. to deny the transfer?

PLACEMENT PREFERENCES

The child must be placed according to placement preferences in ss. 48.028(7) or 938.028(6) in any out-of-home, pre-adoptive, or adoptive placement, unless good cause is shown, per ss. 48.028(7)(e) or 938.028(6)(d).

- ☐ Has the tribe established its own order of placement preferences? *If yes, that order applies.*
- ☐ Is the current or proposed placement in compliance with the applicable placement preferences?
- ☐ What efforts have been made to place the child in the order of preference?
- ☐ Have both parents been asked for names of extended family members?
- ☐ Was the tribe contacted for a placement approved, licensed, or operated by the tribe?
- ☐ If placement preferences not followed, is there good cause to depart from order of preference? *Reasons for asserting good cause must be made on the record or provided to court and parties in writing.*

Additional Considerations for Out-of-Home and Pre-adoptive Placements:

- ☐ Is the child's placement the least restrictive, family-like setting that meets the child's special needs, if any?
- ☐ Is the child placed in reasonable proximity to the child's home, taking into account any special needs?

FINDINGS FOR OUT-OF-HOME PLACEMENT AND INVOLUNTARY TERMINATION OF PARENTAL RIGHTS

Emergency Removal

- ☐ Is emergency removal necessary to prevent imminent physical damage or harm to the child?

Active Efforts to Prevent Breakup of Indian Family*

- ☐ Have all of the required activities under ss. 48.028(4)(g) or 938.028(4)(f) for *active efforts* been conducted?
 - ☐ Were appropriate tribal representatives requested to evaluate the family and assist in developing a case plan that uses resources of the tribe and Indian community?
 - ☐ Has a comprehensive assessment of the family been completed?
 - ☐ Have tribal representatives been identified, notified, and invited to participate in the proceeding?
 - ☐ Have extended family members been consulted for support, cultural connections, and placement?
 - ☐ Were arrangements made to provide family interaction in the most natural and unsupervised setting?
 - ☐ Were all available family preservation strategies offered or employed, while also involving the tribe?
 - ☐ Were community resources offered and the family actively assisted in accessing those resources?
 - ☐ Was monitoring of client progress and participation in services provided?
 - ☐ If services were unavailable, were alternative ways of addressing the family's needs considered?
- ☐ If any activity was not conducted, has documentation been provided to the court with an explanation?
- ☐ Why have the activities and efforts been unsuccessful in reunifying the Indian family?

**Under WICWA, the active efforts finding is also required at Extension and Permanency Hearings.*

Serious Emotional or Physical Damage

- ☐ Has the petitioner provided the requisite qualified expert witness (QEW) testimony?
- ☐ Was the QEW chosen in the order of preference under ss. 48.028(4)(f) or 938.028(4)(e)? If not, what efforts were made to secure a QEW from a higher order of preference?
- ☐ Is the QEW knowledgeable in the tribe's customs and child-rearing practices? In what capacity?
- ☐ Are any of the reasons for the child's removal related to cultural child-rearing practices?
- ☐ Does a causal relationship exist between the conditions in the home and the likelihood that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child, based on the QEW testimony? *Burden of proof of clear and convincing evidence for out-of-home placement and beyond a reasonable doubt for involuntary TPR.*

VOLUNTARY TPR, VOLUNTARY PLACEMENT AGREEMENT, OR DELEGATION OF POWERS

- ☐ Has the Indian parent or Indian custodian consented in writing?
- ☐ Were the terms and consequences of the consent, including limitation on withdrawing consent, fully explained and understood?
- ☐ Was the consent recorded before a judge and accompanied by the judge's certificate?
- ☐ Is the child at least 11 days old at the time of the consent?
- ☐ Have placement preferences been followed or is there good cause to depart from the order of preference?



Fundamentals of Implementation

The State of Wisconsin codified the Federal Indian Child Welfare Act into Chapters 48 and 938 in 2009. The following information provides a basic guideline for implementation of the Wisconsin Indian Child Welfare Act (WICWA).

What is ICWA?

ICWA is the federal Indian Child Welfare Act of 1978 (Public Law 95-608). The Act seeks to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families.

What is WICWA?

WICWA is the Wisconsin version of ICWA as codified into Wisconsin statutes. 2009 Wisconsin Act 94, which was the codification, was signed by Gov. Jim Doyle on December 7, 2009 and became effective on December 22, 2009. The Wisconsin law essentially mirrors the ICWA and implements the minimum standards referenced in ICWA.

Who is an Indian child?

An Indian child is a person under the age of 18 who is affiliated with an Indian tribe as

- 1) a member of the tribe or
- 2) A person who is eligible for membership in an Indian tribe and who is the biological child of a member of an Indian tribe.

The tribe in which the child is a member or eligible for membership need not be the same tribe in which the parent is a member. [Ref. s. 48.02(8g); s. 938.02(8g)]

What is a “child custody proceeding”?

A child custody proceeding means any proceeding under Ch. 48 (i.e., CHIPS) and certain proceedings under Ch. 938 (i.e., JIPS) which could result in the out-of-home care or adoptive placement of an Indian child or termination of the parental rights to the Indian child. A child custody proceeding does **not** include a family proceeding under Ch. 767 (e.g., divorce proceedings) or actions related to delinquency acts under Ch. 938. [Ref. s. 48.028(2)(d); s. 938.028(2)(b)]

Does WICWA apply to Ch. 938 cases?

It does apply to certain JIPS cases under s. 938.13. Specifically, WICWA applies to juvenile custody proceedings for juveniles who are:

- o Uncontrollable (s. 938.13(4))
- o Habitually truant (s. 938.13(6))
- o School dropouts (s. 938.13(6m))
- o Habitual runaways (s. 938.13(7))

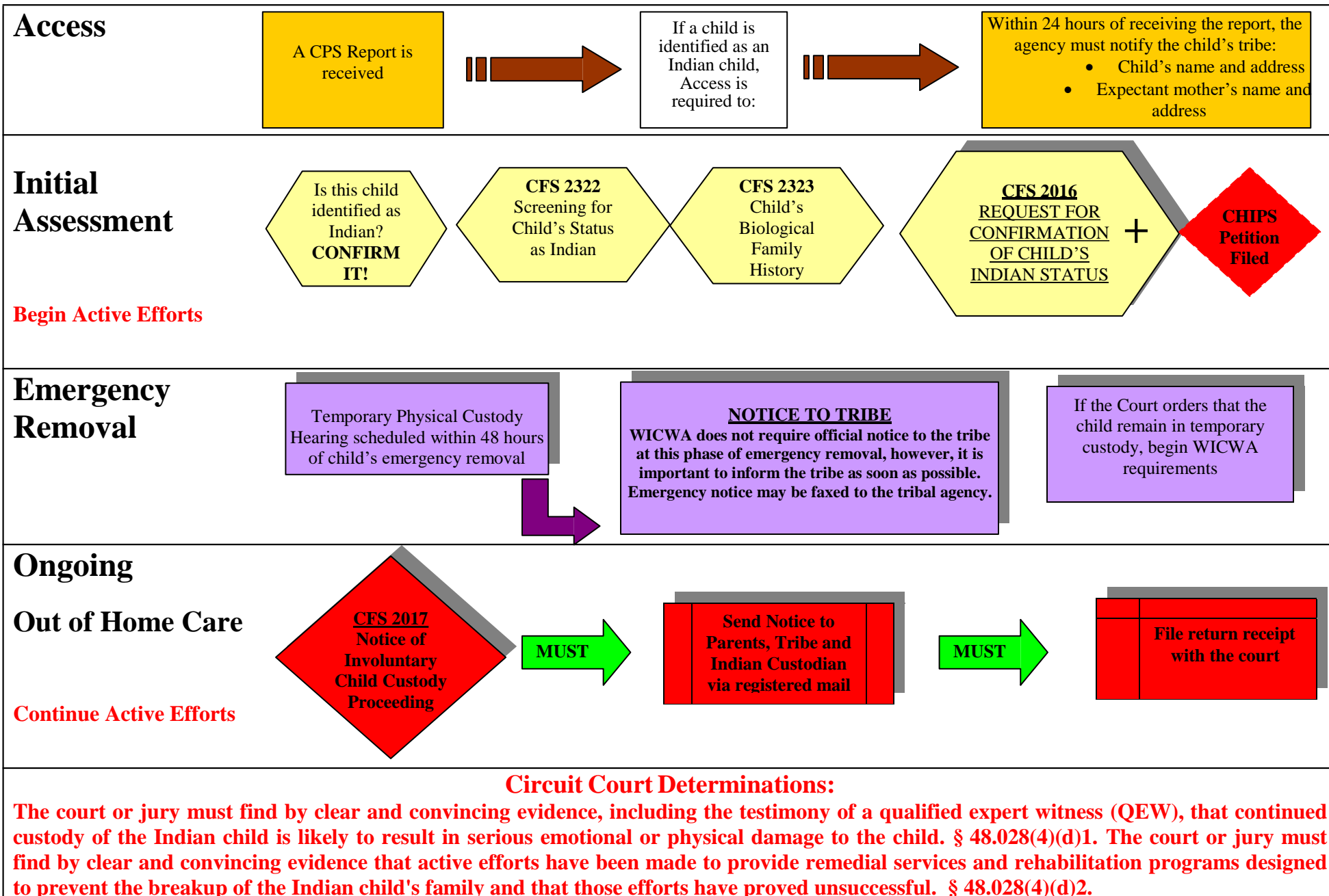
[Ref. s. 938.028(2)(b)]

What resources are available for me to implement the Wisconsin Indian Child Welfare Act?

- 1) Chapter 48.028 – WICWA
- 2) DCF – Website
<https://dcf.wisconsin.gov/wicwa>
- 3) DCF – Website Q & A
<https://dcf.wisconsin.gov/wicwa>

Wisconsin Indian Child Welfare Desk Aid, Version 2, was created to assist in the basic provisions of WICWA. Please refer to the above references for detailed compliance language. This product is not intended to replace or minimize WICWA/ICWA processes or requirements. Please contact the DCF Indian Child Welfare Consultant for questions – 608.266.5330

<u>Access</u> § 48.981(3)(bm)	<p>When a county department receives a CPS report of an unborn child or child living wholly or partially within the reservation, and has reason to know that the child is an Indian child, the department shall provide notice within 24 hours of the report, to the tribal agent, consisting of the name and address of the Indian child or expectant mother and that a report has been received. Best Practice: Apply standard to all Wisconsin Tribes.</p>
<u>Initial Assessment</u>	<p>In order for the agency to determine whether WICWA/ICWA applies to an Indian child, it must be confirmed whether the child is a member or eligible for membership in a tribe. The eWiSACWIS ICWA site contains the following forms that should be utilized in determining if WICWA/</p> <p>Request for Confirmation of Child's Indian Status. These forms are sent to the tribal contact via first class mail. The Wisconsin tribal contacts are located on the last page of this Desk Aid; other tribes can be found at http://www.gpo.gov/fdsys/pkg/FR-2010-05-19/pdf/2010-11696.pdf. If you do not know the name of the child's tribe, send the information request forms to the Midwest BIA Regional Office, or if the tribe is not a Midwest tribe, send to the appropriate BIA Regional Office located at the aforementioned site. Best Practice: Ask if the child, parent, grandparents are "Indian". As the case moves forward, follow placement preferences and begin Active Efforts.</p> <ul style="list-style-type: none"> • Request tribal agency to assist in evaluating the case • Invite representatives of child's tribe to participate in custody proceeding at earliest point • Notify and consult with extended family members to provide structure and support
<u>Emergency Removals</u> 25 USC§1922 §48.028(3)(b)2	<p>The federal and state law permit an agency to remove an Indian child in order to prevent imminent physical harm or damage to the Indian child. When a removal or placement is no longer necessary to prevent imminent physical harm or damage to the child: a) the agency shall expeditiously initiate a child custody proceeding; b) transfer the child to the jurisdiction of the appropriate tribe; or c) return the child to the parent, as may be appropriate. State law requires a hearing within 48 hours of the emergency removal of the child to determine continued custody of the child. Best Practice: If the agency knows this child is an Indian child and member of a tribe or eligible for membership, fax an informational notice containing name of the child, court jurisdiction and time/date of the Temporary Physical Custody hearing as soon as possible. Formal notice to the tribe under the federal or state law is not required at this point. Placement preferences should be followed in an emergency placement.</p>
<u>Ongoing</u> § 48.028(4)(a), (4)(g), (7)(b), (7)(c) 25 USC § 1912, 1915	<ol style="list-style-type: none"> 1) At the point a county agency is considering requesting a CHIPS or JIPS petition on behalf of an Indian child, the agency shall notify the tribe. Use eWiSACWIS form CFS 2017, Notice of Involuntary Child Custody Proceeding of an Indian Child. Send the form to the appropriate tribe(s) via registered mail with return receipt requested. The return receipt must be filed with the court. 2) When it is determined that an Indian child will remain in custody, the agency must initiate placement preferences of ICWA/WICWA <ol style="list-style-type: none"> b. A foster home or treatment foster home licensed, approved or specified by the Indian child's tribe c. Indian foster home or treatment foster home licensed or approved by the department, a county department, or a child welfare agency d. A group home or residential care center for children and youth approved by an Indian tribe or operated by an Indian organization 3) If the Indian child's tribe has established an order of preference, the order of preference established by that tribe shall be followed 4) Once the Indian child is referred to ongoing services, continue Active Efforts as defined in WICWA <ul style="list-style-type: none"> • Provide family interaction • Community resources were offered and actively assisted in accessing those resources • Monitoring progress and client participation in services was provided • Alternative ways of addressing the needs were provided if services did not exist or not available to the family
<u>Concurrent Planning</u>	<p>Collaborate and consult with the Tribal agency to pursue permanency and tribal permanency options.</p>
TPR	<p>Re-initiate formal Notice to the tribe and follow ICWA/WICWA requirements for Termination of Parental Rights.</p>



The Wisconsin Public Defender's office provides representation for Indian Children, Parents, or Indian Custodians of Indian Children in legal matters affected by WICWA. A finding of financial eligibility is required before an attorney may be appointed. Contact the office in your area, for more information, call 608.266.0087 or visit www.wisspd.org

Wisconsin Tribal Contacts

 <p>Bad River Band of Lake Superior Chippewa ICW Director P.O. Box 55 Odanah, WI 54861 715.682.7127 Fax: 715.682.7883 bricw@badriver-nsn.gov</p>	 <p>Forest County Potawatomi Community Indian Child Welfare Dept P.O. Box 340 Crandon, WI 54520 715.478.4812 Fax: 715.478.7442 ICW.Main@fcpotawatomi-nsn.gov</p>
 <p>Ho-Chunk Nation Div. of Child & Family Services P.O. Box 40 Black River Falls, WI 54615 715.284.2622 Fax: 715.284.0097 icw@ho-chunk.com</p>	 <p>Lac Courte Oreilles Band of Lake Superior Chippewa of Wisconsin ICW Director 13394 W. Trepania Road Hayward, WI 54843-2186 715.634.8934 Fax: 715.634.2981 lcoicw@yahoo.com</p>
 <p>Lac du Flambeau Band of Lake Superior Chippewa ICW Director P.O. Box 67 Lac du Flambeau, WI 54538 715.588.3303 Fax: 715.588.9128 ldficw@ldftribe.com</p>	 <p>Menominee Indian Tribe of Wisconsin ICW Director P.O. Box 520 Keshena, WI 54135-0520 715.799.5161 Fax: 715.799.6061</p>
 <p>Oneida Tribe of Indians of Wisconsin ICW Director P.O. Box 365 Oneida, WI 54155 920.490.3701 Fax: 920.490.3820 ICW@oneidanation.org</p>	 <p>Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin ICW Director 88385 Pike Road Bayfield, WI 54814 715.779.3747 Fax: 715.779.3783 icwa@redcliff-nsn.gov</p>
 <p>Sokaogon Chippewa Community ICW Director 3051 Sand Lake Road Crandon, WI 54520 715.478.2520 Fax: 715.478.7674</p>	 <p>St. Croix Chippewa Indians of Wisconsin ICW Director 24670 State Road 35/70 Suite 800 Siren, WI 54872 715.349.2195 Fax: 715.349.8665 icwa@stcroixtribalcenter.com</p>
 <p>Stockbridge-Munsee Community ICW Director W12802 County road A Bowler, WI 54416 715.793.4580 Fax: 715.793.1312 ICW@mohican.com</p>	<p>Bureau of Indian Affairs Midwest Region – Human Services 5600 West American Boulevard, Suite 500 Norman Pointe II Building Bloomington, MN 55437 612.725.4571 (ICWA Responses) Fax: 612.713.4439 Valerie.Vasquez@bia.gov</p>

The Department of Children and Families is an equal opportunity employer and service provider. If you have a disability and need to access services, receive information in an alternate format, or need information translated to another language, please call (608) 266-8787. Individuals who are deaf, hard of hearing, deaf-blind or speech disabled can use the free Wisconsin Relay Service (WRS) – 711 to contact the department.

**INDIAN CHILD WELFARE CONTACTS
FOR FEDERALLY RECOGNIZED TRIBES
IN WISCONSIN**

April 2021

**BAD RIVER BAND OF LAKE SUPERIOR TRIBE OF
CHIPPEWA INDIANS**

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